

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

DOCKET NO. 04-cv-11872

THE CONTINENTAL CASUALTY  
COMPANY, as subrogee of RONALD  
SHOWALTER, MICHAEL GIOMBETTI,  
and W. F. KING  
Plaintiff,

v.

WILLIAM C. HENCHY, NORTHSIDE  
MARINA AT SESUIT HARBOR, INC.,  
JOSEPH S. BUSCONE, as Trustee of the  
Northside Marina Trust, and FAITH  
BUSCONE, as Trustee of the Northside  
Marina Trust  
Defendants.

04-cv-11872

COMPLAINT AND DEMAND FOR  
TRIAL BY JURY

RECEIPT # 58270  
AMOUNT \$ 150.00  
SUMMONS ISSUED 4  
LOCAL RULE 4.1 1  
WAIVER FORM 1  
MCF ISSUED 1  
BY DPTY. CLK. M.F.  
DATE 8/27/04

MAGISTRATE JUDGE RBC

PARTIES

1. The Plaintiff, The Continental Casualty Company, as subrogee of Ronald Showalter, Michael Giombetti, and W. F. King ("Continental"), is an insurance company duly authorized to provide insurance coverage in the Commonwealth of Massachusetts, with a principal place of business located at CNA Plaza, 333 S. Wabash Ave, Chicago, Cook County, Illinois.

2. The defendant, William C. Henchy ("Henchy"), is an individual with a last known address of 165 Cranberry Highway, Orleans, Barnstable County, Massachusetts.

3. The defendant, Northside Marina at Sesuit Harbor, Inc. ("Northside"), is a Massachusetts Corporation with a principal place of business located at 357 Sesuit Neck Road, East Dennis, Barnstable County, Massachusetts.

4. The defendant, Joseph S. Buscone, as Trustee of the Northside Marina

Trust, upon information and belief, is an individual with a last and usual residence located at 34 Schooner Road, Dennis, Barnstable County, Massachusetts, and is the co-trustee if the Northside Marina Trust, which owns real property located at 357 Sesuit Neck Road, East Dennis, Barnstable County, Massachusetts.

5. The defendant, Faith Buscone, as Trustee of the Northside Marina Trust, upon information and belief, is an individual with a last and usual residence located at 34 Schooner Road, Dennis, Barnstable County, Massachusetts, and is the co-trustee if the Northside Marina Trust, which owns real property located at 357 Sesuit Neck Road, East Dennis, Barnstable County, Massachusetts.

#### JURISDICTION

6. This Court has jurisdiction as an admiralty and maritime tort claim based upon 28 U.S.C. § 1333 and within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

#### FACTS COMMON TO ALL COUNTS

7. At all times material hereto, Continental underwrote a policies of insurance providing marine insurance for the following of its insureds and their vessels: (a) Ronald Showalter, Policy Number 1607003-01; (b) Michael Giombetti, Policy Number 1330617-01; and (c) W. F. King, Policy Number 1355900-00.

8. On or about August 30, 2001, Northside operated and controlled a marina under the business name "Northside Marina" located in East Dennis, Massachusetts, which was used for the purposes of storing and maintaining vessels.

9. On or about August 30, 2001, on information and belief, Joseph S. Buscone and Faith Buscone, as Co-Trustees of the Northside Marina Trust ("Trustees"),

were the owners of the real property upon which the Northside Marina was located and operated.

10. On or about August 30, 2001, Ronald Showalter, Michael Giombetti, and W. F. King ("Continental's Insureds") each had vessels berthed at the Northside Marina.

11. On August 30, 2001 at approximately 8:00 p.m. a fire occurred at the Northside Marina that lasted several hours and damaged several boats and dock walkways.

12. As a result of the fire, certain vessels insured through Continental on behalf of Continental's insureds were either destroyed or damaged.

13. As a result of such fire, and pursuant to the terms of its insurance contracts with its insureds, Continental made payment or will make payment to its insureds for their losses, as follows:

(a) Ronald Showalter (claim # 0108244): CTL--\$105,000; Salvage--\$6,677.50; Disposal--\$2,000; and Personal Property \$950.

(b) Michael Giombetti (claim # 0108243); CTL--\$35,000; Salvage--\$1,470.

(c) W. F. King (claim # 0108246); Damages--\$3,486.50.

Total Amount: \$154,584.

14. Continental is subrogated to the rights of its insured in at least the above total amount of \$154,584 paid to its insureds as set forth above, pursuant to its rights of subrogation by contract and by operation of law.

15. The fire and all ensuing claims, damages and losses were not caused by the fault of Continental's Insureds or their respective vessels.

16. On information and belief, the Dennis Police Department or other law enforcement entities have conducted or continue to conduct an official investigation into the cause of the fire.

17. On information and belief, such investigation has revealed that the fire was intentionally started.

18. Further, on information and belief, such investigation has focused on Henchy as a suspect in the intentional starting of the fire.

19. On information and belief, Henchy either intentionally started the fire or through his acts and omissions was negligent or grossly negligent in connection with the fire.

20. On information and belief, at the time that the fire started, Northside did not have adequate personnel supervising the docks, slips, or boats of the marina, did not have adequate security systems in place, and did not have sufficient devices in place to prevent the spread of, the occurrence of, or to assist with the extinguishment of, the fire.

21. The foregoing negligence and failure to take adequate precautions allowed the fire to start and spread.

### **COUNT I**

(Negligence vs. Henchy)

22. Plaintiff repeats and realleges paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Henchy owed Continental's Insureds a duty, among other things, to take reasonable precautions so as to prevent damage to the property of Continental's Insureds.

24. Henchy breached this duty by conducting himself in such a way as to allow or cause the fire to start and spread.

25. As a foreseeable, direct and proximate result of Henchy's breach of his duty, Continental's insureds, and Continental, by virtue of its subrogated rights, have suffered and continue to suffer damages.

## **COUNT II**

(Conversion vs. Henchy)

26. Plaintiff repeats and realleges paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Continental's Insureds, at all relevant times, were either the owners of their respective vessels or entitled to immediate possession of them.

28. On information and belief, Henchy, having no right of ownership in or to possession of such Vessels, wrongfully and intentionally started a fire on or near them while it was docked at the Northside Marina on August 30, 2001.

29. The fire destroyed or damaged such vessels.

30. Henchy's intentional destruction or alteration of such Vessels constitutes a wrongful exercise of dominion and control by Henchy which seriously impaired the rights of Continental's Insureds to sole ownership and/or immediate possession of their vessels, and therefore constitutes conversion.

## **COUNT III**

(Negligence vs. Northside)

31. Plaintiff repeats and realleges paragraphs 1 through 30 of this Complaint as if fully set forth herein.

32. Northside owed Continental's Insureds a duty, among other things, to take reasonable precautions so as to prevent damage to the property of Continental's Insureds.

33. In the course of owning, operating, and/or managing the Northside Marina, Northside breached this duty.

34. As a foreseeable, direct and proximate result of Northside's breach of duty, Continental's insureds, and Continental, by virtue of its subrogated rights, have suffered and continue to suffer damages.

#### **COUNT IV**

(Breach of and/or Negligent Bailment vs. Northside)

35. Plaintiff repeats and realleges paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. A bailment was created when Continental's Insureds delivered and entrusted their vessels to Northside and Northside accepted possession of the vessels.

37. In connection with the bailment, Northside owed Continental's Insureds a duty of due care to prevent the loss or destruction of their vessels.

38. Northside failed to perform or negligently performed its bailment obligations.

39. As a direct and proximate result of Northside's breach of bailment or negligent bailment, Continental's insureds, and Continental, by virtue of its subrogated rights, have suffered and continue to suffer damages.

#### **COUNT V**

(Negligence vs. Joseph S. Buscone and Faith Buscone, as Co-Trustees of the Northside Marina Trust)

40. Plaintiff repeats and realleges paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Joseph S. Buscone and Faith Buscone, as Co-Trustees of the Northside Marina Trust, were obligated by contract, law, or otherwise, amount other things, to ensure that Northside was not using the Trust's property in a negligent or otherwise unlawful manner.

42. The Trustees owed Continental's Insureds a duty, among other things, to take reasonable precautions so as to prevent damage to the property of Continental's Insureds.

43. The acts and omissions of the Trustees constitute a breach of this duty.

44. As a foreseeable, direct and proximate result of the Trustees' breach of duty, Continental's insureds, and Continental, by virtue of its subrogated rights, have suffered and continue to suffer damages.

**WHEREFORE**, the plaintiff, The Continental Insurance Company, as Subrogee of Ronald Showalter, Michael Giombetti, and W. F. King, prays that this Honorable Court grant it the following relief:

A. That pursuant to Count One of this Complaint, this Court enter judgment on its behalf against the defendant William C. Henchy in an amount equal to any and all damages sustained by the plaintiff as a result of the defendant's negligence;

B. That pursuant to Count Two of this Complaint, this Court enter judgment on its behalf against the defendant William C. Henchy in an amount equal to any and all damages sustained by the plaintiff as a result of the defendant's conversion;

C. That pursuant to Count Three of this Complaint, this Court enter judgment on its behalf against the defendant Northside Marina at Sesuit Harbor, Inc., in an

amount equal to any and all damages sustained by the plaintiff as a result of the defendant's negligence;

D. That pursuant to Count Four of this Complaint, this Court enter judgment on its behalf against the defendant Northside Marina at Sesuit Harbor, Inc. in an amount equal to any and all damages sustained by the plaintiff as a result of the defendant's breach of bailment contract, or negligence;

E. That pursuant to Count Five of this Complaint, this Court enter judgment on its behalf against the defendants Joseph S. Buscone and Faith Buscone, as Co-Trustees of the Northside Marina Trust, in an amount equal to any and all damages sustained by the plaintiff as a result of the defendants' negligence;

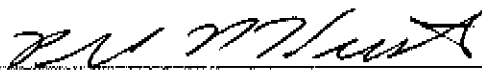
F. That this Court grant the plaintiff its reasonable attorney's fees, costs, and interest; and

G. That this Court grant the plaintiff any other relief it deems meet and proper.

**JURY DEMAND**

The plaintiff demands a trial by jury as to all counts, where applicable.

The Plaintiff,  
THE CONTINENTAL CASUALTY  
COMPANY, as subrogee of Ronald Showalter,  
Michael Giombetti, and W. F. King  
By its Attorneys,

  
\_\_\_\_\_  
Lauren Motola-Davis, BBO# 638561  
Philip M. Hirshberg, BBO # 567234  
MORRISON MAHONEY LLP  
250 Summer Street  
Boston, MA 02210-1181  
(617) 439-7500

Dated: 27 August 2004



JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

The Continental Casualty Company, as subrogee of Ronald Showalter, Michael Giombetti and W.F. King

(b) County of Residence of First Listed Plaintiff Cook (Illinois)

(EXCEPT IN U.S. PLAINTIFF CASES)

**DEFENDANTS**

William C. Henchy and Northside Marina at Sesuit Harbor, Inc., Joseph S. Buscone and Faith Buscone, Trustees of the Northside Marina Trust

County of Residence of First Listed Defendant Marina Trust

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

**(c) Attorney's (Firm Name, Address, and Telephone Number)**

Philip M. Hirshberg, Esquire (617) 439-7500  
Morrison Mahoney LLP  
250 Summer Street, Boston, MA 02210-1181

**Attorneys (If Known)**

Patricia A. Lang, Esquire  
Bertram E. Snyder, Esquire

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One for Defendant)

Citizen of this State ☐ 1 ☒ 1 Incorporated or Principal Place of Business in This State ☐ 4 DEF ☐ 4

Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5

Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statute <input type="checkbox"/> 990 Other Statutory Actions
			<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13 USC) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAXSUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action in admiralty for property damage arising from a marina fire.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

**DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE O'Toole

DOCKET NUMBER 02-CV-10408

DATE 8/27/04

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**For Northside Marina at Scsuit, Inc.;  
Joseph S. Buscone, as Trustee of the  
Northside Marina Trust, and Faith Buscone,  
as Trustee of the Northside Marina Trust:**

Patricia A. Lang, Esquire  
Lawson & Weitzen, LLP  
88 Black Falcon Avenue, Suite 345  
Boston, MA 02210-2414

**For William C. Henchy, III**

Bertram E. Snyder, Esquire  
Looney & Grossman  
101 Arch Street, 9<sup>th</sup> Floor  
Boston, MA 02110-1112

04-11872 WGY